applied to the deceased's upkeep and maintenance but it is clear that, even allowing for the fact that the deceased, as part of his earnings received two free meals a day, a substantial sum should be deducted under this head. Taking all these matters into account we estimate the monthly sum which would, if he had lived, have been applied to the upkeep and maintenance of his wife and three children at an average sum of $200 per month. We estimate the sum required to purchase an annuity at the rate of $200 per month, taking the life expectancy at the agreed figure of 26 years, would be in the region of $32,000. This sum must, however, be taxed down, to use Lord Wright's expression, in order to make due allowance for various contingencies such as the possible death of the widow and of the children, the possibility of a falling-off in the earning capacity of the deceased before the end of his expected 26 years of life, the possibility of the widow's re-marriage and the termination of the dependency of the children. Taking all these contingencies into account, we are of the opinion that the total sum recoverable under section 12 of the Civil Law Ordinance should be $22,000. Of this sum we award $15,000 to the widow and $7,000 to the children, of which we allocate $1,000 to the eldest child, $2,000 to the second child and $4,000 to the youngest child. In addition to this we award funeral expenses of $1,000. As to the claim under section 7, we award $3,500 to the estate but as there is an intestacy, this goes to the widow and is overlapped and merged in the $15,000 already awarded to her. The judgment of the learned Judge will therefore be varied by substituting these sums for those awarded in the Court below but the order awarding the respondents the whole of the costs of the action in the Court below will stand. As regards the costs of this appeal, the appellant has failed as regards the issue of liability but he has succeeded in obtaining an important reduction in the amount of damages. In these circumstances we think substantial justice will be done if the appellant is ordered to pay half the respondents' costs of this appeal. The appellant must also pay the costs of the cross appeal.

Thomson C.J. (F.M.) concurred.

Appeal dismissed.

Solicitors: *Braddell Bros.; Christopher & Francis.*

TAN GEOK TEE v. KHO HOCK CHOO (w) & ANOR.

[C. A. (Tan Ah Tah, Rigby and Wee Chong Jin JJ.) January 17, 1958]

[Singapore — Civil Appeal No. 16 of 1957]

Negligence — Collision between a motor car and trishaw — No finding as to contributory negligence — Retrial — Quantum of damages.

This was an appeal from a judgment awarding the sum of $21,475 to the respondents in respect of the death of one Lee Ah Song, a trishaw-rider, whose trishaw was involved in a collision with the appellant's motor car along Geylang Road. In his judgment the learned trial Judge held that the appellant was solely to blame for the accident.

There was a passenger in the trishaw at the time of the collision. According to this passenger the trishaw was proceeding straight down Geylang Road when it was run down from behind by the appellant's car. In his cross-examination he denied that the deceased while riding his trishaw swerved to the right in order to avoid a van which was parked on the near side of the road.

On appeal the submissions of counsel related to: (i) the question whether there was any contributory negligence on the part of the deceased; and (ii) the question of damages.

The Court allowed the appeal to the extent of ordering a retrial limited to the issue as to whether or not the deceased was guilty of any degree of negligence in contributing to the accident and, if so, to what extent the damages awarded should be reduced.

Observations on quantum of damages by the President of the Court of Appeal.

COURT OF APPEAL, appeal against the decision of Knight J.

G. J. Okell for the appellant.

Denis Murphy for the respondent.

Tan Ah Tah J. : — This is an appeal by the defendant from a judgment awarding the sum of $21,475 to the plaintiffs in respect of the death of one Lee Ah Song, a trishaw-rider, whose trishaw was involved in a collision with the defendant's motor car which was being driven by the defendant along Geylang Road. In his judgment the learned trial Judge held that the defendant was solely to blame for the accident.

There was a passenger in the trishaw at the time of the collision. According to this passenger the trishaw was proceeding straight down Geylang Road when it was run down from behind by the defendant's motor car. In his cross-examination he denied that the deceased while riding his trishaw swerved to the right in order to avoid a van which was parked on the near side of the road.

The defendant gave a different version of the collision. He said that he first saw the trishaw when it was about 50 to 60 yards ahead of him and as he approached it the deceased suddenly swerved to the right as there was a van in front of the trishaw. The defendant also said that as the deceased was swerving to the right he was perhaps 10 feet behind the deceased. He then went on to describe how the collision occurred in spite of his efforts to avoid the trishaw.

In this Court counsel for the defendant does not seek to dispute that his client was guilty of negligence in driving the motor car. The submissions of counsel for the defendant in this appeal can be conveniently considered under two heads, the first of which relates to the question whether there was any contributory negligence on the part of the deceased and the second to the question of damages.

As to the first of these matters, counsel for the defendant contends that the learned trial Judge failed to consider and decide whether the deceased was at fault in the management of the trishaw and in his manner of driving it, and whether if he was at fault the injuries sustained by him resulted from his fault. It is further contended that the learned trial Judge failed to find all the primary facts in issue between the parties.

It is clear from a perusal of his judgment that the learned trial Judge made no finding of fact on the question whether the trishaw swerved to its right in the manner alleged by the defendant. He dealt with that question in the following words:—

"But even on the assumption that the deceased did so swerve to his right this was only what any competent driver of a vehicle behind him must have expected him to do in view of the parked van in front of him. The defendant admitted that he first saw the trishaw some 50 - 60 yards ahead of him in this brightly-lit road. At the point where the accident took place the road was more than 32 feet wide and one-way traffic at that. Quite obviously even if the swerve did occur, any careful and experienced driver should have anticipated it and given a very wide berth to the trishaw. On the contrary, however, the collision appears to have taken place if anything nearer to the left hand curb than to the traffic divider on the right."

The learned trial Judge clearly considered the question of liability on the assumption that the trishaw swerved to its right, without making a specific finding of fact that it did so swerve. There is another question of fact with which the learned trial Judge does not appear to have dealt, and that is the question how far the motor car was away from the trishaw when the swerve took place, if in fact it did take place.

The learned trial Judge stated his conclusion on the question of liability in the following words:—

"I have no doubt that this accident arose because the defendant was not keeping a proper look-out and negligently collided with this trishaw when he had yards of space to his right in which to avoid it. I hold him solely to blame for the accident."

I can find nothing in his judgment to show that the learned trial Judge considered the question whether the deceased was guilty of contributory negligence. It must be remembered that in the defence, in addition to a plea that the collision was caused solely by the negligence of the deceased, there is an alternative plea that the negligence of the deceased was a contributory cause of the collision. In my view, in order to give due consideration to the alternative plea, it is necessary to make a finding of fact on the question whether the trishaw swerved to its right and also to deal with the further question how far the motor car was away from the trishaw when the swerve took place, if it is found that the swerve did take place. As these questions were not considered by the learned trial Judge it is clear, in my opinion, that the issue raised by the defendant of contributory negligence on the part of the deceased was not tried. In my judgment, the only way in which this matter can be rectified is by ordering a new trial limited to this issue.

I turn now to consider the second matter raised by counsel for the defendant, namely, the question of the amount of damages awarded by the learned trial Judge. In the Court below counsel on both sides agreed a scale of figures based, *inter alia,* on the working life expectation of the deceased and the amount of his earnings which was available for his dependants every month. The learned trial Judge found that the deceased provided a sum of approximately $150 per month for the maintenance of his wife and family. Taking the working life expectation of the deceased to be 16 years the learned trial Judge awarded the sum of $21,000 as damages to the dependants of the deceased. Now according to the scale which had been agreed by counsel the maximum amount that he could have awarded was $19,512. No doubt the learned trial Judge was not bound to accept the scale of figures, but if he had found it unsatisfactory I think counsel should have been given an opportunity to address the Court on the subject before a departure was made from the agreed figures.

I see no reason why the scale of figures should not be accepted. In my opinion, in the circumstances of this case, the learned trial Judge was not justified in awarding the sum of $21,000 as damages. As I have stated the maximum amount he could have awarded was $19,512. However, it is necessary to allow some deduction for contingencies and the uncertainties of life. In my judgment, after allowing such deduction, the sum to be awarded to the dependants

under section 12 of the Civil Law Ordinance should be $18,000. This award involves a re-apportionment of the amounts to be paid to the dependants of the deceased. In re-apportioning these amounts I adopt the proportions which can be seen from the judgment of the Court below. The damages are accordingly re-apportioned as follows :—

Kho Hock Choo — widow	$10,286
Lee Ee Lian — daughter	1,286
Lee Kim Lian — daughter	1,714
Lee Joo Lian — daughter	2,142
Lee Hai Seng — son	2572
	$18,000

The award of $475 being special damage should stand.

In my judgment, for the reasons which I have stated, this appeal should be allowed and there should be a new trial limited to the issue whether or not the deceased was guilty of contributory negligence. I allow the appeal accordingly and direct that a new trial be had between the parties limited to that issue only. The finding of the learned trial Judge that the defendant was guilty of negligence should stand. If on the new trial the deceased should be found guilty of contributory negligence the Judge who decides that issue will no doubt reduce the damages to such extent as he thinks just and equitable.

The plaintiffs will pay the costs of this appeal. As to the costs of the trial in the Court below, the order of the learned trial Judge should stand. There will be a set-off of the costs. The costs of the new trial will be in the discretion of the Judge who decides the issue. The deposit will be paid out to the defendant or his solicitors.

Rigby J. : —I have had the advantage of reading the judgment of my brother Tan Ah Tah in this appeal. With considerable regret, I have come to the same conclusion that there should be a new trial, limited solely to the issue as to whether or not the deceased was guilty of any degree of negligence in contributing to the accident and, if so, to what extent the damages awarded should be reduced. My regret in arriving at this decision is due solely to the dubious and unsatisfactory course, which such an order for retrial necessitates, of recalling witnesses and expecting them to give evidence with any convincing degree of accuracy and certainty concerning an accident which occurred over two years ago and which must have taken place in a matter of a few seconds at the most.

Mr. Okell, for the appellant, accepted the finding of the trial Court that the appellant was negligent, but he submitted that there was no express finding of fact by the learned trial Judge on the essential question as to whether or not the deceased was guilty of contributory negligence. On this issue there was a conflict of evidence between the only eye-witnesses to the accident, namely, the passenger in the trishaw propelled by the deceased, and the appellant himself as driver of the car which ran into, or collided with, the trishaw of the deceased. The passenger stated that the trishaw was being propelled in a straight and uninterrupted course down the road when it was struck in the rear by the car driven by the appellant. The appellant, on the other hand, stated that the immediate cause of the accident was that the trishaw rider swerved out to avoid a stationary vehicle in front of him.

The learned trial Judge made no specific finding of fact on the evidence as to whether or not the trishaw rider swerved to the right to avoid the stationary vehicle. He dealt with the evidence given on this matter in the following words :—

> "But even on the assumption that the deceased did so swerve to his right this was only what any competent driver of a vehicle behind him must have expected him to do in view of the parked van in front of him. The defendant admitted that he first saw the trishaw some 50 - 60 yards ahead of him in this brightly-lit road. At the point where the accident took place the road was more than 32 feet wide and one-way traffic at that. Quite obviously even if the swerve did occur, any careful and experienced driver should have anticipated it and given a very wide berth to the trishaw. On the contrary, however, the collision appears to have taken place if anything nearer to the left hand curb than to the traffic divider on the right."

Later on in his judgment he said :—

> "I have no doubt that this accident arose because the defendant was not keeping a proper look-out and negligently collided with this trishaw when he had yards of space to his right in which to avoid it. I hold him solely to blame for the accident."

Mr. Murphy, for the respondents, contended that taking these two passages together what, in effect, the learned trial Judge is saying is :—

> "I do not believe there was a swerve, but even if there was I hold the defendant (appellant) was solely negligent."

I am not convinced that that is the necessary meaning to be inferred from these two passages. On the contrary, having regard to the earlier passage in the judgment, it seems to me that what the learned trial Judge meant, and said, was that even if there was a swerve by the trishaw rider to the right to avoid the stationary vehicle in front of him then that was a manoeuvre which any careful driver should have anticipated in the circumstances of the case, and in so failing to anticipate it and take avoiding action, the appellant was not keeping a proper look-out and was, therefore, solely to blame for the accident.

But if, in fact, the deceased, as rider of the trishaw, swerved to the right and thereby contributed to the accident that took place, though the appellant, as driver of the car, may well have been negligent in all the circumstances of the case in not taking proper steps to avoid the trishaw by giving it a wide berth, the accident which occurred, though the result partly of the appellant in not taking the necessary avoiding action to avert that accident, may well have been also partly the fault of the unfortunate trishaw rider in swerving to the right in front of the oncoming vehicle. In my view, therefore, it was necessary that there should be a specific finding of fact as to whether or not the trishaw rider did so swerve to the right, and if he did do so, to what extent, if at all, he contributed to the accident which occurred.

For the reasons given by my brother Tan Ah Tah, I agree with him that in the particular circumstances of this case the damages awarded to the dependants under section 12 of the Civil Law Ordinance should be $18,000 and that they should be re-apportioned in the manner set out in his judgment.

I also agree that the respondents should pay the costs of this appeal, but that the order of the learned trial Judge as to the costs in the Court below should stand.

The costs of the new trial will, of course, be in the discretion of the Judge who decides the issue.

Wee Chong Jin J. : — I have had the advantage of reading the judgments of my brothers Tan Ah Tah and Rigby and agree with the orders proposed.

Order accordingly.

Solicitors : *Braddell Bros.; Murphy, Dunbar & Chung.*

A. CLOUET & CO. (MALAYA) LTD. v. SOUTH ASIA GLACIER BAR

[O. C. J. (Ambrose J.) July 14, 1958]

[Singapore — Suit No. 1325 of 1956]

Principal and Agent — Improper arrangement enabling sub-tenant to carry on business of bar — Whether agent by operation of law — Estoppel.

The defendants were tenants of certain premises, where they carried on the business of a bar and restaurant. In 1955, they sub-let the premises to one Lall Singh for a period of three years together with furniture, fixtures and fittings at a rent of $1,000 per month. It was agreed that the sub-tenant should pay the tenants 10 per cent of the gross cash sales every month. But the tenants were to have no say in the running of the business apart from the right to inspect the books at the end of each month. The sub-tenant agreed to indemnify the partners against all loss they might sustain as licensees of the premises in respect of any breach of regulations. The sub-tenant carried on business under the business name of "South Asia Bar & Restaurant". The plaintiff company supplied liquors to South Asia Bar & Restaurant and sued the defendants for the price of those liquors.

Held: (1) Lall Singh was sole proprietor of South Asia Bar & Restaurant during the material period;

(2) Lall Singh was not the agent of the defendants. The improper arrangement by which he was put into possession of the premises and enabled to carry on the business of the bar did not, by itself or by operation of law, make him the agent of the defendants: Mac Fisheries Ltd. v. Harrison[1] followed;

(3) the defendants were not estopped from denying that Lall Singh was their agent: Betts v. Harrison[2] distinguished;

(4) the plaintiff company's claim failed.

Cases referred to :—

(1) *Mac Fisheries Ltd. v. Harrison* (1924), 93 L.J.K.B. 811.

(2) *Betts v. Harrison* (1924) unreported but referred to at page 814 of 93 L.J.K.B.

CIVIL SUIT.

T. H. A. Potts for the plaintiffs.

John Pillai for the defendants.

Cur. Adv. Vult.

Ambrose J. : — Between the 27th July and the 23rd December, 1955, A. Clouet & Co. (Malaya) Ltd., sold and delivered liquors to the value of $2,878.50 to the South Asia Bar & Restaurant at No 12, Bencoolen Street, Singapore. The sum of $666.00 was paid to account and the balance due was $2,212.50 on the 31st December, 1955. The company sued Lall Singh trading as South Asia Bar & Restaurant for this amount and judgment in default of appearance was entered against him on the 2nd August, 1956. On the 11th January, 1957, the judgment was set aside on the application of the company on the ground that Lall Singh was neither the proprietor nor a partner of the South Asia Bar & Restaurant.

Between the 10th September and 28th December, 1955, Wills Lee & Co. Ltd., a subsidiary company of A. Clouet & Co. (Malaya) Ltd., sold and delivered liquors to the value of $2,314.30 to the South Asia Bar & Restaurant. Nothing was paid to account and the whole sum of $2,314.30 remained due on the 31st December, 1955. Wills Lee & Co. Ltd. sued Lall Singh trading as South Asia Bar & Restaurant for the amount of $2,314.30 and judgment in default of appearance was entered against him on the 2nd August, 1956. On the 11th January, 1957, the judgment was set aside on the application of Wills Lee & Co. Ltd. for the same reason as the judgment mentioned above.

On the 11th October, 1956, Wills Lee & Co. Ltd. assigned the debt due to it from the South Asia Bar & Restaurant to A. Clouet & Co. (Malaya) Ltd., and gave notice of the assignment to the South Asia Bar & Restaurant by a registered letter dated the 11th October, 1956.